

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

STEPHEN LEWIS, : 08-CV-3027 (JG)

Plaintiff,

United States Courthouse
Brooklyn, New York

BRIAN FISCHER, et al.

June 10, 2010
9:30 a.m.

Defendants.

June 10,

TRANSCRIPT OF CIVIL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE JOHN GLEESON
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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1 (In open court.)

2 (The following occurred outside the presence of the
3 jury.)

4 COURTROOM DEPUTY: All rise.

5 (Judge Gleeson takes the bench.)

6 THE COURT: Good morning, everyone.

7 ALL: Good morning, your Honor.

8 THE COURT: Please be seated.

9 My law clerk reported to me last evening that a
10 settlement has been reached.

11 Is that correct?

12 MR. BIESTY: Yes, your Honor.

13 MR. EVEN: Yes.

14 THE COURT: Do you want to come up and put the
15 stipulation of settlement on the record?

16 MR. EVEN: Your Honor, do you want me to go through
17 it, or do you want me to just hand it? How do you want us to
18 proceed with it?

19 THE COURT: Is it lengthy?

20 MR. BIESTY: No.

21 MR. EVEN: It's four pages.

22 (Handing.)

23 THE COURT: (Perusing document.)

24 Okay. Well, the written stipulation dispenses with
25 the need to place it on the record orally.

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1 You realize, you've been over with your client that
2 this ends the case for him? He can't come back later on and
3 seek additional relief against anybody arising out of these
4 events that occurred back in November of 2007 in the Arthur
5 Kill facility. He understands that?

6 MR. EVEN: He understands, your Honor.

7 THE COURT: You understand that, sir?

8 MR. LEWIS: Yes, your Honor.

9 THE COURT: And, in a nutshell, the agreement is
10 payment of three hundred thousand dollars to Mr. Lewis.

11 There's not going to be any fee application on your
12 firm's part; is that correct?

13 MR. EVEN: No. Cravath waives all fees, your Honor.

14 THE COURT: So stipulated, sir?

15 MR. EVEN: So stipulated, your Honor.

16 MR. BIESTY: That's correct, your Honor.

17 THE COURT: This settlement puts an end to this
18 controversy between Mr. Lewis and these defendants, and so the
19 case is closed. The end of the case brings an end to my
20 jurisdiction, to this court's subject matter jurisdiction, but
21 I hope it doesn't end the matter for the New York State
22 Department of Correctional Services.

23 The case arose out of a discrete event, a sexually
24 abusive pat and frisk conducted by Officer Burroughs in
25 November of 2007, but the trial's made it clear that there are

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1 systematic problems in the management of the Arthur Kill
2 facility. For all I know, those problems afflict the numerous
3 other state prisons as well. But, in any event, at Arthur
4 Kill, they contribute to an environment that allows the abuse
5 of inmates to go unpunished. That's bad enough, but when the
6 management failures, combined with what appears to be a
7 cultural imperative among corrections officers that they never
8 say anything that would get another officer in trouble, the
9 perverse effect is an atmosphere that fosters abuse.

10 The simple act of retrieving the grievances against
11 Officer Burroughs exposed one problem. You'd naturally expect
12 that in any workplace, public or private, management would
13 keep track for each employee of all complaints made against
14 that employee. That way a simple review of the employee's
15 file when a complaint was made would reveal the kind of red
16 flags that were all over the employment history of Officer
17 Burroughs.

18 There are other management problems revealed by the
19 evidence in this case, which I'll mention in a moment, and
20 this particular one, the way grievances are filed, doesn't
21 appear to be the reason Burroughs went unpunished despite a
22 series of sexual abuse claims over the years. That's because
23 there was but one superintendent during the relevant time
24 period who was fully aware of those red flags. So, the way
25 grievances are stored and retrieved was not the main problem

1 in this case. At least that's the way it appears to me. But
2 still, I can only assume that when a new superintendent takes
3 over at Arthur Kill, one who has no knowledge of the prior
4 histories of the officers there, all those officers will
5 essentially start again with a clean slate. The red flags
6 that could warrant a more searching investigation of a
7 particular grievance or a particular officer will remain
8 buried in the prison's arcane filing system unless simple and
9 obvious changes are made.

10 The so-called investigation of inmate grievances of
11 this kind is another problem. Unless an officer admits to
12 assaulting an inmate, which of course never happens, an
13 allegation of assault is found to be unsubstantiated. And
14 although there may be exceptions, it appears to me that most
15 of the time no one even bothers to interview the complaining
16 inmate, the complained-about officer, or any witnesses. If
17 the accused officer submits a memo saying "I didn't do it,"
18 that appears to be the end of it.

19 I was struck by Superintendent Breslin's testimony
20 about the investigation, such as it was, into Mr. Lewis'
21 grievance. The testimony is on page 450 of the transcript.
22 Superintendent Breslin said, quote: There was, in fact, no
23 evidence of an improper pat frisk by Officer Burroughs, close
24 quote. He's further asked that if he had found evidence that
25 Burroughs had acted improperly, what would he have done. He

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1 said he would have gone back to the inspector general's office
2 and told them to conduct a more thorough investigation.

3 I say this with respect and recognizing the limits
4 of my office and the limited information that's been placed
5 before me, but that mindset really needs to be changed. It
6 can't rationally, defensibly be said that there was no
7 evidence of an improper pat frisk of Lewis. Lewis said it
8 happened. And if this trial's proved anything, it's proved
9 that a person's firsthand testimony of abuse at the hands of a
10 corrections officer is evidence, even if the person is a
11 convicted felon in a prison. It may not always be reliable
12 evidence. It may not always carry the day. The risk of false
13 accusation is palpable, but it simply can't be said that it is
14 no evidence of wrongdoing.

15 And I don't think my quarrel with the superintendent
16 is merely semantic. Indeed, I think that mindset that just
17 because an inmate says it happened is no evidence that it
18 happened is the bedrock of a disciplinary system that
19 literally never finds a grievance of this sort to be
20 substantiated.

21 Finally, I understand the logic that supports the
22 inference that an officer about whom there are lots of inmate
23 complaints must be doing a good job, but the prison
24 authorities can't always rule out the competing inference that
25 an officer who is the subject of lots of inmate complaints

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1 needs supervision and discipline. That appears to have
2 occurred here.

3 Unlike the procedure for filing grievances for which
4 there is an obvious fix, I don't purport to have solutions for
5 these other problems, or even a sufficient record to fully
6 evaluate them. And I'm mindful that there's lots that goes
7 into running a prison that I don't appreciate, including
8 security problems, resource limitations, and the like. So I
9 leave the correction of these problems to others, at least for
10 now.

11 Obvious candidates for changes within the system
12 include actual interviews of inmates who make grievances,
13 actual interviews of officers rather than allowing them to
14 simply mail in a terse written denial. It occurs to me that
15 the use of technological advances ought to be considered as
16 listening to the circumstances that were conjured by the other
17 complaints and the complaints of Mr. Lewis. I've been around
18 the block a little bit. I know there's very little that
19 happens in certain areas of facilities like Arthur Kill that's
20 not on camera. I would imagine the use of that form of
21 technology could produce a much more informed and effective
22 disciplinary system at Arthur Kill and elsewhere.

23 The use of a more detached investigating officer
24 than the ones that were used in connection with the grievances
25 I heard evidence about is another obvious candidate for

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1 change.

2 As I said, I recognize these issues are no longer
3 within my jurisdiction, but I hope DOCS moves forward from
4 this and learns from it and avoids having future cases like
5 this.

6 My thanks go to the Cravath firm for its pro bono
7 representation of Mr. Lewis.

8 Have a good day.

9 MR. BIESTY: Thank you, your Honor.

10 MR. EVEN: Thank you, your Honor.

11 (Pause in the proceedings.)

12

13 THE COURT: I'll go back and excuse the jury. I'll
14 tell the jury that the lawyers are free to speak to them and
15 they're free to speak to lawyers. I'll also tell them that
16 they're free if they choose not to speak to anyone and that
17 you'll respect their wishes in that regard.

18 MR. BIESTY: Thank you, your Honor.

19 MR. EVEN: Thank you.

20 THE COURT: Thank you. Have a good day.

21 (Time noted: 9:55 a.m.)

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